

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**I.D. #12017  
RESOLUTION E-4479  
April 18, 2013**

**R E S O L U T I O N**

Resolution E-4479 Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) filed amended tariffs to incorporate the Electric Service Provider (ESP) financial security provisions and re-entry fee provisions adopted in Decision (D.) 11-12-018.

**PROPOSED OUTCOME:** This Resolution adopts the ESP financial security calculation methodology and security amounts for each ESP to cover administrative costs of the involuntary return of DA customers to bundled service, pursuant to D.11-12-018 and Public Utilities Code Section<sup>1</sup> 394.25.e.

**SAFETY CONSIDERATIONS:** This Resolution is limited to approving the ESP financial security calculation methodology and as such has no incremental impact on safety.

**ESTIMATED COST:** No impact on utilities' authorized revenue requirements.

By PG&E Advice Letter (AL) 3983-E/E-A, filed on December 29, 2011 and February 3, 2012 respectively; SCE AL 2687-E, filed on January 6, 2012; and SDG&E AL 2324-E, filed on January 3, 2012.

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**SUMMARY**

This Resolution adopts the Electric Service Provider (ESP) financial security calculation methodology to cover the administrative costs in case of an en masse involuntary return of an ESP's customers to bundled utility service, pursuant to D.11-12-018 and Section 394.25(e). The ESP security requirements prescribed in

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<sup>1</sup> Unless otherwise stated, all code section references are to the California Public Utilities Code.

Section 394.25(e) address the risk of cost shifting in the event of an involuntary return of Direct Access (DA) customers, by assigning responsibility to the ESP for any resulting re-entry fees. The Commission in D.11-12-018 defined an involuntary return of a DA customer to utility bundled service to be when the investor-owned utility (IOU or utility) has initiated the Direct Access Service Request process to return a customer to IOU bundled service due to any of the following events:

- a. The Commission has revoked the ESP's registration;
- b. The ESP-IOU Agreement has been terminated; or
- c. The ESP or its authorized California Independent System Operator (CAISO) Scheduling Coordinator (SC) has defaulted on its CAISO SC obligations, such that the ESP no longer has an appropriately authorized CAISO SC.

The following situations do not qualify as an involuntary return:

- a. A customer's contract with an ESP has expired; or
- b. An ESP discontinues service to a customer due to that customer's default under their service agreement with the ESP.

The Energy Division's ESP Registration unit has updated the utilities' calculations of the financial security amounts applicable for each ESP operating in the utility's service territories. Since the number of customers an ESP has is confidential information, the total financial security amount applicable to that specific ESP is also confidential. ESPs shall be required to adjust the amount of financial security held by the Commission within 30 days of Energy Division's final notice of the adopted security amount.

## BACKGROUND

**Public Utilities Code Section<sup>2</sup> 394(b)(9) requires ESPs to post financial security so that residential and small commercial customers have recourse in the event of fraud or nonperformance. The Commission currently holds security in the form of bonds and cash deposits that ESPs have posted to meet these previously-established financial security requirements.**

Section 394(b)(9) requires as a precondition to registration, among other things, proof of financial viability. Section 394(b)(9) states in relevant part, "In

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<sup>2</sup> Unless otherwise stated, all code section references are to the California Public Utilities Code.

determining the financial viability of the electric service provider, the commission shall ... ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.” The Commission proposed interim ESP registration requirements applicable to ESPs serving residential and small commercial customers in D.98-03-072 and confirmed those requirements in D.99-05-034. The financial security requirements adopted in these decisions addressed the Section 394(b)(9) requirement for residential and small commercial customers to have recourse in the event of an ESP’s fraud or nonperformance. The amount of this security requirement, ranging from \$25,000 to \$100,000, varies depending on the number of customers the ESP serves. These financial security requirements remain in effect, unaltered by D.11-12-018.

**D.03-12-015 issued pursuant to Assembly Bill (AB) 117,<sup>3</sup> imposed a new financial security requirement on all ESPs, not just those serving residential and small commercial customers.**

The Commission issued D.03-12-015 pursuant to Assembly Bill (AB) 117,<sup>4</sup> which imposed a new financial security requirement. The impact of adding subdivision (e) to Section 394 was to require ESPs to post security to cover re-entry fees in the event an ESP involuntarily returns its customers to bundled service. D.03-12-015 did not define re-entry fees. Instead this decision applied the security requirements existing at the time for ESPs serving residential and small commercial customers to all ESPs.

**D.11-12-018 requires financial security to cover re-entry fees and prevent cost-shifting in the event an ESP involuntarily returns its customers to bundled service.**

In D.11-12-018, the Commission, in re-evaluating the rules applicable to DA, considered the financial security requirements for ESPs pursuant specifically to

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<sup>3</sup> Assembly Bill (AB) 117 (Stats. 2002, Ch. 838), among other things, also amended Section 394 to expand the ESP registration requirement to include all ESPs, not just those offering service to residential and small commercial customers.

<sup>4</sup> Ibid.

Section 394.25(e).<sup>5</sup> This section provides that in the event an ESP returns customers involuntarily to utility bundled service, the ESP is responsible for any re-entry fees necessary to avoid imposing costs on other customers of the utility. Therefore, the statute requires that the ESP post a bond or demonstrate insurance sufficient to cover those re-entry fees as a condition of its registration.

The Commission in D.11-12-018 interpreted the scope of re-entry fees as covering a different range of costs for small commercial and residential, in contrast to the re-entry fees for large commercial and industrial DA customers. The re-entry fee applicable to the involuntary return of any customer account necessarily entails the administrative cost of switching the customer account to bundled service. In addition to those administrative costs, the Commission determined that the re-entry fees applicable to small commercial and residential DA customer accounts (that are not associated with large customer accounts) include incremental procurement costs of serving those accounts. Involuntarily returned large commercial and industrial DA customers, in contrast, bear the risk for increased procurement costs through payment of the Transitional Bundled Service rate, an incremental rate that reflects the utilities' procurement costs at the time. The methodology to calculate incremental procurement costs relating to the involuntary return of small commercial and residential DA customers was subsequently decided in D.13-01-021.

To quantify the administrative costs of switching DA customer accounts en masse to utility bundled service, the Commission designated as proxy, the administrative fees included in the respective retail utility tariff for returning Community Choice Aggregator customers. The re-entry fee applicable to large commercial and industrial customers is limited to these administrative costs. Small customer accounts affiliated with a large commercial or industrial DA

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<sup>5</sup> Section 394.25.e states in relevant part, "If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. ..."

customer are treated as large customer accounts, not as residential and small commercial accounts.

**The utilities filed ALs to amend their tariffs to incorporate the ESP financial security provisions and re-entry fee provisions to cover administrative costs applicable to the involuntary return of DA customers and to set forth the calculations of security applicable to each ESP.**

Pursuant to OP 14 of D.11-12-018, PG&E, SCE, and SDG&E timely filed AL 3983-E, AL 2687-E, and AL 2324-E respectively, to amend their tariffs to incorporate the ESP financial security and re-entry fee provisions to cover administrative costs applicable to an ESP's involuntary return of its customers. Pursuant to OP 16 of D.11-12-018, the utility advice letters also set forth the calculation of the financial security amount applicable for each ESP operating in the utility's service territory. Since the number of customer accounts served by an ESP is confidential, the utilities redacted the amount of security applicable to each ESP from the public AL filings. Each utility submitted its computations in unredacted form to the Energy Division.

To determine the amount of financial security applicable to each ESP operating in its service territory, each utility multiplied the number of customer accounts of the ESP by the currently applicable "per customer account administrative fee" of \$3.94 for PG&E; \$1.54 for SCE; and \$1.12 for SDG&E.

**On February 3, 2012, PG&E filed Supplemental AL 3983-E-A to add the Joint Protestors' suggested tariff language distinction regarding residential and small commercial accounts not affiliated with the load of a large commercial or industrial customer account.**

This is explained in the Protest Section below. In replies to the Joint Protestors, PG&E, SCE, and SDG&E indicated that the Joint Protestors' suggested tariff language is acceptable to them. However, SCE and SDG&E have not yet supplemented their ALs.

**The Energy Division's ESP Registration unit, in conjunction with the Commission's Fiscal Office, administers the ESP financial security requirements.**

Discussion in D.11-12-018 specified that, other than revisions in the amount or form of ESP financial security based on the results of R.07-05-025, previously established administrative procedures for the posting of ESP financial security deposits with the Commission shall continue to apply.

## NOTICE

Notice of PG&E AL 3983-E, SCE AL 2687-E, and SDG&E AL 2324-E was made by publication in the Commission's Daily Calendar. Each of the utilities stated in their ALs that a copy of the AL was served in accordance with Section 4 of General Order 96-B and to parties on the service list to R.07-05-025.

Pursuant to OP 16 of D.11-12-018,<sup>6</sup> PG&E and SDG&E in their ALs stated that they were concurrently serving by electronic mail on each applicable ESP: (1) a copy of the advice letter with the relevant supporting data; and (2) calculations of each respective ESP's financial security amount provided confidentially only to that specific ESP in complete and unredacted form. SCE confirmed to the Energy Division by electronic mail on September 12, 2012 that it had done likewise.

## PROTESTS

**The one issue raised by the Joint Protestors applicable to all three utilities was that the proposed tariff revisions do not adequately address a distinction the Commission made in D.11-12-018 about small commercial customers.**

PG&E AL 3983-E, SCE AL 2687-E, and SDG&E AL 2324-E were separately protested on January 18, 26, and 23, respectively by Alliance for Retail Energy Markets, the Direct Access Customer Coalition, the Retail Energy Supply Association, the Energy Users Forum and the School Project for Utility Rate Reduction (Joint Protestors).<sup>7</sup> The Joint Protestors object that the utilities' proposed tariff language is not explicit that the financial security requirement approved for ESPs in D.11-12-018 treat a small customer load that is affiliated with the load of a large commercial or industrial customer as a large customer account. Thus, the Joint Protestors recommend specific corrective language.

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<sup>6</sup> OP 16 states in relevant part, "... Concurrently with submitting the advice letter to the Energy Division, the utility shall serve by electronic means on each applicable ESP a copy of the advice letter, with the relevant supporting data and calculations of each respective ESP's financial security amount provided confidentially only to that specific ESP in complete and unredacted form."

<sup>7</sup> Pursuant to OP 17 of D.11-12-018, the Commission provided the ESPs an opportunity to protest within 20 days of the advice letter filing if they believed that the financial security amount had been calculated inaccurately by the utility or in conflict with the adopted processes. The Energy Division received no protests from ESPs.

PG&E on January 25, 2012, SCE on February 2, 2012, and SDG&E on January 30, 2012, replied to the Joint Protestors' protest, stating that they would file a Supplemental Advice Letter to clarify their respective tariffs as requested by the Joint Protestors.

**In addition, the Joint Protestors raised an issue specific to SCE AL 2687-E, namely that the re-entry fee of \$1.54 does not comport with the \$1.49 figure referenced on Page 70 of D.11-12-018, and that SCE did not explain this discrepancy.**

In its reply, SCE explained that the re-entry cost figure of \$1.54 submitted in Advice 2678-E complies with D.11-12-018, because it reflects the current fee approved for inclusion in Schedule CCA-SF, Section E.2. In D.11-12-018, OP 20, the Commission directed the utilities to use as a proxy for administrative costs of involuntarily returned DA customers, the tariffed administrative fee for returning CCA customers. SCE explained that the fee applicable to returning CCA customers was \$1.49 for years, but pursuant to D.09-03-025 and AL 2336-E, the current \$1.54 figure was incorporated into SCE's Schedule CCA-SF. Accordingly, as the CCA fee is modified to reflect SCE's administrative costs to return CCA customer accounts to bundled service, the proxy applicable to involuntarily returned DA customer accounts should likewise be adjusted.

## DISCUSSION

**ESPs shall adjust the amount of their posted financial security within 30 days of final notice from the Energy Division's ESP Registration unit.**

The financial security computations addressed in this resolution are limited to the administrative costs of switching accounts that the ESP returns involuntarily to bundled service.<sup>8</sup> To compute the financial security applicable to each ESP, the utilities multiplied the "number of customer accounts" served by the ESP times the "currently applicable per customer account administrative fee" of \$3.94 for PG&E; \$1.54 for SCE; and \$1.12 for SDG&E. Due to the timing involved, the utilities used ESP customer account numbers from the end of November 2011. Meanwhile, ESPs had the opportunity to gain customers as the load allowable under the 2012 and 2013 DA load caps became available.

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<sup>8</sup> The financial security requirement related to procurement costs that is applicable only to ESPs serving residential and small commercial customer accounts not affiliated with large commercial accounts was addressed separately in D.13-01-021.

Energy Division updated the utility computations with customer account numbers from the January 31, 2013 Direct Access Service Request Reports provided by the utilities to the Energy Division. The Energy Division also confirmed the applicable administrative fees from the utilities' CCA tariffs and updated the \$1.37<sup>9</sup> fee currently in effect for SCE. Finally, Energy Division summed the amounts applicable to each ESP for all three utilities. Because an ESP's number of customer accounts is confidential, the amount of security to be posted by each ESP for administrative costs is also confidential and thus not provided in this resolution.

The Energy Division's ESP Registration unit will provide each ESP with a notice of the amount of financial security due on an aggregate-statewide basis. Within 30 days of this notice, the ESP shall post the requisite financial security.

**The utilities should update their tariffs.**

The tariffs to which the utilities added language about the new ESP financial security requirements need to be updated.

**References to an ESP registration requirement for ESPs serving residential or small commercial customers should be corrected to indicate that all ESPs regardless of customer classes they serve are required to register with the Commission.**

Pursuant to Public Utilities Code Section 394(b), Each ESP, as defined, is required to register with the CPUC, without regard to whether the ESP offers service to residential and/or small commercial customers. Utility tariff language should reflect that all ESPs are required to register with the CPUC (PG&E, Rule 22.C.1.b, 22.D.2; SDG&E Rule 25.C.1.b and Rule 25.D.2).

**The list of ESPs updated daily is posted on the Commission's web page; utility tariff language should refer to that list.**

The Commission maintains the list of registered ESPs. The list of Registered ESPs is posted on the Commission's web page, with the date of the last update. Pursuant to Section 392.1(a), "The commission shall maintain and make generally available a list of entities offering electrical services operating in California. ... The commission shall, upon request, make this information available at no

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<sup>9</sup> Pursuant to D.12-11-051



charge. ..." Thus utility tariffs should reference this posted list (PG&E, Rule 22.C.1.b and SDG&E Rule 25.C.1.b).

## COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

## FINDINGS AND CONCLUSIONS

1. PG&E filed Advice Letter (AL) 3983-E; SCE filed AL 2687-E; and SDG&E filed AL 2324-E in compliance with Ordering Paragraph 14 of Decision (D.)11-12-018, which directed the utilities to file Tier 2 Advice Letters by January 6, 2012 to amend their tariffs to incorporate the Electric Service Provider (ESP) financial security provisions and re-entry fee provisions to cover administrative costs applicable to the involuntary return of Direct Access (DA) customers, as adopted in the decision. These advice letters were also to set forth the calculation of the financial security and reentry fee amount for each ESP to cover administrative costs applicable to the involuntary return of DA customers.
2. The section 394(b)(9) ESP financial security requirement implemented by D.99-05-034 remains in effect for ESPs to post financial security to provide residential and small commercial customers with recourse in the event of an ESP's fraud or nonperformance.
3. Discussion in Decision 11-12-018 provides guidance that administrative procedures for the posting of ESP financial security deposits with the Commission shall continue to apply, subject to any revisions in the amount or form of ESP financial security.
4. A small commercial account is defined as a commercial account with load less than 20 kilowatts.
5. A residential or small commercial account that is affiliated with a large account is treated as a large account for purposes of establishing the ESP financial security requirement, pursuant to Section 394.25(e), to cover costs

incurred when an ESP returns its customers involuntarily to bundled utility service.

6. ESPs shall receive notices from the Energy Division's ESP Registration unit about the financial security requirements applicable to each ESP specifically and any adjustments as required by the Commission in D.11-12-018.

**THEREFORE IT IS ORDERED THAT:**

1. The request of PG&E in Advice Letter AL 3983-E/-E-A, SCE in AL 2687-E, and SDG&E in AL 2324-E, Pursuant to Ordering Paragraph 14 of Decision (D.) 11-12-018, for approval of amended tariffs to incorporate the Electric Service Provider (ESP) financial security provisions and re-entry fee provisions to cover administrative costs applicable to the involuntary return of Direct Access (DA) customers to bundled service and the calculation of the amount of financial security applicable for each ESP is approved as modified herein.
2. ESPs shall adjust the amount of their posted financial security within 30 days of notice from the Energy Division's ESP Registration unit.
3. The utilities shall supplement their advice letters to update their tariffs as follows:
  - SCE and SDG&E shall revise their tariffs as suggested by the Joint Protestors to clarify that residential and small commercial accounts affiliated with large customer accounts are treated as large customer accounts for purposes of establishing ESP financial security requirements.
  - References in utility tariffs to an ESP registration requirement for ESPs serving residential or small commercial customers should be corrected to indicate that all ESPs register with the Commission (PG&E, Rule 22.C.1.b, 22.D.2; SDG&E Rule 25.C.1.b and Rule 25.D.2).
  - Utility tariffs shall refer to the list of registered ESPs on the Commission's web page (PG&E Rule 22.C.1.b and SDG&E Rule 25.C.1.b).

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 18, 2013; the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director